



**U.S. Citizenship  
and Immigration  
Services**

**Non-Precedent Decision of the  
Administrative Appeals Office**

In Re: 8749303

Date: JUNE 9, 2020

Appeal of Nebraska Service Center Decision

Form I-140, Immigrant Petition for Alien Worker (Extraordinary Ability)

The Petitioner, a singer, seeks classification as an individual of extraordinary ability. *See* Immigration and Nationality Act (the Act) section 203(b)(1)(A), 8 U.S.C. § 1153(b)(1)(A). This first preference classification makes immigrant visas available to those who can demonstrate their extraordinary ability through sustained national or international acclaim and whose achievements have been recognized in their field through extensive documentation.

The Director of the Nebraska Service Center denied the petition, concluding that the Petitioner satisfied only one of the ten initial evidentiary criteria, of which she must meet at least three.

In these proceedings, it is the Petitioner's burden to establish eligibility for the requested benefit. *See* Section 291 of the Act, 8 U.S.C. § 1361. Upon *de novo* review, we will dismiss the appeal.

**I. LAW**

Section 203(b)(1)(A) of the Act makes visas available to immigrants with extraordinary ability if:

- (i) the alien has extraordinary ability in the sciences, arts, education, business, or athletics which has been demonstrated by sustained national or international acclaim and whose achievements have been recognized in the field through extensive documentation,
- (ii) the alien seeks to enter the United States to continue work in the area of extraordinary ability, and
- (iii) the alien's entry into the United States will substantially benefit prospectively the United States.

The term "extraordinary ability" refers only to those individuals in "that small percentage who have risen to the very top of the field of endeavor." 8 C.F.R. § 204.5(h)(2). The implementing regulation at 8 C.F.R. § 204.5(h)(3) sets forth a multi-part analysis. First, a petitioner can demonstrate sustained acclaim and the recognition of his or her achievements in the field through a one-time achievement

(that is, a major, internationally recognized award). If that petitioner does not submit this evidence, then he or she must provide sufficient qualifying documentation that meets at least three of the ten categories listed at 8 C.F.R. § 204.5(h)(3)(i) – (x) (including items such as awards, published material in certain media, and scholarly articles).

Where a petitioner meets these initial evidence requirements, we then consider the totality of the material provided in a final merits determination and assess whether the record shows sustained national or international acclaim and demonstrates that the individual is among the small percentage at the very top of the field of endeavor. *See Kazarian v. USCIS*, 596 F.3d 1115 (9th Cir. 2010) (discussing a two-part review where the documentation is first counted and then, if fulfilling the required number of criteria, considered in the context of a final merits determination).

## II. ANALYSIS

The Petitioner is a singer who has performed with various ensembles and Latin musicians in her native country of Venezuela and in the United States.

### A. Evidentiary Criteria

Because the Petitioner has not indicated or established that she has received a major, internationally recognized award, she must satisfy at least three of the alternate regulatory criteria at 8 C.F.R. § 204.5(h)(3)(i)-(x). In denying the petition, the Director found that the Petitioner met only one of the evidentiary criteria, judging under 8 C.F.R. § 204.5(h)(3)(iv). The record reflects that the Petitioner participated as a member of the jury for the [ ] Festival Internacional Orquidea de Oro in [ ]. Accordingly, we agree with the Director that the Petitioner fulfilled the judging criterion.

On appeal, the Petitioner maintains that she meets two additional criteria, discussed below.<sup>1</sup> We have reviewed all the evidence in the record and conclude that it does not support a finding that the Petitioner satisfies the requirements of at least three criteria.

*Documentation of the individual's receipt of lesser nationally or internationally recognized prizes or awards for excellence in the field of endeavor.* 8 C.F.R. § 204.5(h)(3)(i).

The Petitioner asserts that she meets this criterion based on her receipt of a *Mara de Oro*<sup>2</sup> award in [ ]. In order to fulfill this criterion, the Petitioner must demonstrate that she received the prize or award, and that it is nationally or internationally recognized for excellence in the field of endeavor.<sup>3</sup> Relevant considerations regarding whether the basis for granting the prize or award was excellence in

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<sup>1</sup> We note that the Director determined that the Petitioner initially submitted evidence related to the published material criterion at 8 C.F.R. § 204.5(h)(3)(iii) but did not satisfy this criterion. The Petitioner does not contest this issue on appeal and therefore we deem it to be waived. *See, e.g., Matter of M-A-S-*, 24 I&N Dec. 762, 767 n.2 (BIA 2009).

<sup>2</sup> This award is also referred to in the record as the “Golden Mara” award.

<sup>3</sup> *See* USCIS Policy Memorandum PM 602-0005.1, *Evaluation of Evidence Submitted with Certain Form I-140 Petitions; Revisions to the Adjudicator's Field Manual (AFM) Chapter 22.2, AFM Update AD11-14 6* (Dec. 22, 2010), <https://www.uscis.gov/policymanual/HTML/PolicyManual.html>.

the field include, but are not limited to, the criteria used to grant the prize or award, the national or international significance of the prize or award in the field, and the number of awardees or prize recipients as well as any limitations on competitors.<sup>4</sup> The Petitioner submitted a copy of her award certificate reflecting that she received the [ ] *Mara de Oro* award for [ ] of the Year.” Here, however, the record lacks sufficient objective evidence regarding the Golden Mara award to establish that it is a nationally or internationally recognized prize or award for excellence in music or the arts.

The Petitioner submitted a document dated November 2016 that bears the logo of the Fundacion Mara de Oro de Venezuela e Internacional. The document indicates that the *Mara de Oro* is a “prestigious award” that “has as [its] mission to enhance the work of revealing personalities of radio, television, cinema, theater, dance, advertising, culture, politics and sports,” and that “candidates are elected at the national level and from all over the world, without exception.” The document also confirms that the Petitioner was awarded the [ ] Golden Mara Award for “[ ] of the year,” and provides the names of other “important personalities” and “prestigious journalistic institutions” who previously won the award. However, this document is not a letter and is not attributed to or signed by a responsible authority for that organization. As a result, we cannot determine the actual source of the information contained therein, which limits the probative value of this evidence.

The Petitioner also submitted an undated letter addressed to her from [ ] Fundacion Mara de Oro de Venezuela e Internacional, that provides general information about the foundation and asserts that the Mara de Oro award is “the only award that has certification in the country.” The letter also states the award is given in [ ], based upon “the verdict of the [ ] people, according to the results of surveys conducted in different media . . . and the consensus of the Board of Directors of this Foundation.”

Upon review, we agree with the Director that while the Petitioner documented her receipt of the *Mara de Oro* award in [ ] the record does not establish that the award is a nationally or internationally recognized award for excellence in her field. While we acknowledge the Petitioner’s assertion on appeal that “the location of the bestowment of the award does not lessen its importance or determine that it is a local or regional prize,” it remains that she did not submit evidence of the national or international *recognition* of her Golden Mara award, such as national or widespread local coverage of her award in arts, entertainment, or general media, showing that *Mara de Oro* award winners receive a level of media coverage that is commensurate with a nationally or internationally recognized award in the entertainment industry. The record also does not contain pertinent background information about the award from its organizer or another reliable source, such as a complete list of all of the award categories, the various levels of awards given, the criteria used to grant awards, or even whether all of the awards are deemed national in scope. Therefore, while the Petitioner documented her receipt of the *Mara de Oro* award in [ ] the supporting evidence is insufficient to document that this is a nationally or internationally recognized prize or award for excellence in her field.

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<sup>4</sup> *Id.*

### III. CONCLUSION

We find that although the Petitioner satisfies the judging criterion at 8 C.F.R. § 204.5(h)(3)(iv), she does not meet the additional criterion on appeal relating to nationally or internationally recognized awards. While she argues and submits evidence for one additional criterion on appeal, relating to membership in associations, we need not reach this additional ground. As the Petitioner cannot fulfill the initial evidentiary requirement of three criteria under 8 C.F.R. § 204.5(h)(3), we reserve this issue.<sup>5</sup> Accordingly, we need not provide the type of final merits determination referenced in *Kazarian*, 596 F.3d at 1119-20. Nevertheless, we advise that we have reviewed the record in the aggregate, concluding that it does not support a finding that the Petitioner has established the acclaim and recognition required for the classification sought.

The Petitioner seeks a highly restrictive visa classification, intended for individuals already at the top of their respective fields, rather than for individuals progressing toward the top. USCIS has long held that even athletes performing at the major league level do not automatically meet the “extraordinary ability” standard. *Matter of Price*, 20 I&N Dec. 953, 954 (Assoc. Comm’r 1994). Here, the Petitioner has not shown that the significance of her work is indicative of the required sustained national or international acclaim or that it is consistent with a “career of acclaimed work in the field” as contemplated by Congress. H.R. Rep. No. 101-723, 59 (Sept. 19, 1990); *see also* section 203(b)(1)(A) of the Act. Moreover, the record does not otherwise demonstrate that the Petitioner has garnered national or international acclaim in the field, and she is one of the small percentage who has risen to the very top of the field of endeavor. *See* section 203(b)(1)(A) of the Act and 8 C.F.R. § 204.5(h)(2). The record does not contain sufficient evidence establishing that she is among the upper echelon in her field.

For the reasons discussed above, the Petitioner has not demonstrated her eligibility as an individual of extraordinary ability. The appeal will be dismissed for the above stated reasons, with each considered as an independent and alternate basis for the decision.

**ORDER:** The appeal is dismissed.

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<sup>5</sup> *See INS v. Bagamasbad*, 429 U.S. 24, 25-26 (1976) (stating that, like courts, federal agencies are not generally required to make findings and decisions unnecessary to the results they reach).